

February 2000

U.S. DEPARTMENT OF AGRICULTURE

Freedom of Information Act Annual Report FY 1999

I. Basic Information Regarding Report

Responsibility for preparing the U.S. Department of Agriculture's Freedom of Information Act Annual Report for fiscal year 1998 rests with USDA's Office of Communications. The report can be accessed from the World Wide Web at:

<http://www.usda.gov/news/foia/main.htm>

A paper copy of the report may be obtained by requesting it. For additional information, contact:

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II. How to Make a FOIA Request

Anyone may request USDA records under the FOIA by letter, fax or e-mail. A requester who sends USDA a FOIA request that is understandable and specific about the time frame of the records sought and who has addressed the request to the USDA agency with responsibility for the records has the greatest likelihood of receiving a response within 20 working days of the agency's receipt of the request. Any request that fails to identify the records sought or is sent to the wrong agency must be clarified before an agency can begin a search; in such case, USDA will try to contact the requester for additional information.

The url (universal resource locator) for the U.S. Department of Agriculture's home page is <http://www.usda.gov>. All USDA agencies are linked to the USDA home page. A significant portion of USDA records are maintained in agency files and are described on agency web pages, which are linked to the USDA home page. Potential requesters may want to review agency web pages in order to identify the USDA agency likely to have possession of the records sought.

USDA employs a number of Freedom of Information Act specialists who make every effort to comply with the requirements of the Freedom

of Information Act as amended. The following is a list of USDA agency employees responsible for handling FOIA requests.

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III. Definitions of Terms and Acronyms Used in the Report

A. Agency-specific acronyms are as follows:

AMS - Agricultural Marketing Service;
APHIS - Animal and Plant Health Inspection Service;
CCC - Commodity Credit Corporation;
DA - Departmental Administration;
FAS - Foreign Agricultural Service;
FNCS - Food, Nutrition and Consumer Service;
FSA - Farm Service Agency;
FSIS - Food Safety and Inspection Service;
FS - Forest Service;
GIPSA - Grain Inspection, Packers and Stockyards
Administration;
NAD - National Appeals Division;
NFC - National Finance Center;
NRCS - Natural Resources Conservation Service;
OBPA - Office of Budget and Program Analysis;
OC - Office of Communications;
OCFO - Office of the Chief Financial Officer;
OCIO - Office of the Chief Information Officer;
OCR - Office of Civil Rights;
OGC - Office of General Counsel;
OIG - Office of the Inspector General;
RD - Rural Development;
REE - Research, Education and Economics; and
RMA - Risk Management Agency

B. Basic terms are as follows:

FOIA/PA request - a Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization or a particular topic of interest. A Privacy Act request is a request for records concerning oneself. Requests filed under either law are treated as FOIA requests and are processed as expeditiously as possible.

Initial request - a request to a Federal agency for access to records under the Freedom of Information Act.

Appeal - a request to a Federal agency asking that it review at a higher level of administrative authority any full or partial denial of access to records under the Freedom of Information

Act or Privacy Act or any other FOIA determination, such as a proposed fee for access to records.

Processed request - a request or appeal for which an agency has made its final determination or taken its final action.

Multi-track processing - a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous, complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first out basis. A requester who has an urgent need for records may request expedited processing.

Expedited processing - an agency will process a FOIA request on an expedited basis when the requester has shown a compelling need for a specific record. A compelling need is a threat to life or physical safety for an individual or, in the case of the media, urgency to inform the public concerning actual or alleged Federal Government activity.

Simple request - a FOIA request that an agency using multi-track processing places in its fastest, nonexpedited track based on the volume and/or simplicity of records requested.

Complex request - a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.

Grant - an agency decision to disclose all records in full in response to a FOIA request.

Partial grant - an agency decision to disclose part of a record in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions, or a decision to disclose some records in their entirety but withhold others in whole or in part.

Denial - an agency decision not to release a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions or because of a procedural reason, such as no record was located.

Time limits - the time period authorized in the FOIA for an agency to respond to a FOIA request is 20 working days from proper receipt of a "perfected" FOIA request.

"Perfected" request - a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.

Exemption 3 statute - a separate Federal statute prohibiting the disclosure of certain types of records and authorizing their withholding under FOIA subsection (b)(3).

Median number - the middle, not average, number. For example, of 3, 7 and 14, the median number is 7.

Average number - the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7 and 14, the average number is 8.

IV. Exemption 3 Statutes

During fiscal year 1999 USDA agencies denied the disclosure of records under certain authorities, including:

- Privacy Act of 1974
- Food, Agriculture, Conservation, and Trade Act of 1990
- Section 602, Agricultural Act of 1978
- Archeological Resources Protection Act of 1976
- National Historic Preservation Act of 1966
- Public Law 104-201, Section 821
- 7 U.S.C. 4908, Watermelon Research and Promotion Act
- 7 U.S.C. 4601-4612, Honey Research, Promotion, and Consumer Information Act
- 7 U.S.C. 2279b, Operation of Graduate School of Department of Agriculture as Non-appropriated Fund Instrumentality.
- 41 U.S.C. 253b(m), The National Defense Authorization Act for FY 1997
- AMA Act of 1937 U.S.C. Section 608 (d)(2) (AMS)
- The Agricultural Adjustment Act of 1938 (FSA)
- 35 U.S.C. 205 and 209; 7 U.S.C. 2276 (REE)
- Rule 6(e), Federal Rules of Criminal Procedure - Grand Jury material

No court rulings were issued with respect to USDA's denials of disclosure under these laws in fiscal year 1999.

V. Initial FOIA/PA Requests

A. Number of Initial Requests

1. Number of requests pending at end of FY 98: 1,332

2. Number of requests received during FY 99:	80,574
3. Number of requests processed during FY 99:	80,002
4. Number of requests pending at end of FY 99:	1,879

B. Disposition of Initial Requests

1. Number of total grants:	75,348
2. Number of partial grants:	1,909
3. Number of denials:	1,524

FOIA exemption used:

Exemption 1:	3
Exemption 2:	60
Exemption 3:	345
Exemption 4:	342
Exemption 5:	245
Exemption 6:	1,207
Exemption 7(A):	121
Exemption 7(B):	6
Exemption 7(C):	290
Exemption 7(D):	83
Exemption 7(E):	6
Exemption 7(F):	5
Exemption 8:	0
Exemption 9:	14

4. Other reasons for nondisclosure:

No records:	1,004
Referred elsewhere:	625
Request withdrawn:	218
Fee-related reason:	81
Records not reasonably described:	58
Not a proper FOIA request for some reason:	39
Not an agency record:	87
Duplicate request:	18
Other (specify):	57

Some requests were withheld using the glomarization procedures. Some requesters failed to clarify their requests or respond to agency questions. Some requesters were notified of fees and did not reply or were not willing to pay fees. Some requesters canceled requests. Unable to get requester's address. Requesters no longer needed records. Judge granted an injunction to prevent release of records.

VI. Appeals of Initial Denials

A. Number of Appeals

1. Number of appeals received during FY 99: 289
2. Number of appeals processed during FY 99: 207

B. Disposition of Appeals

1. Number completely upheld: 93
2. Number partially reversed: 47
3. Number completely reversed: 41

FOIA exemption used:

Exemption 1:	0
Exemption 2:	1
Exemption 3:	7
Exemption 4:	11
Exemption 5:	10
Exemption 6:	66
Exemption 7(A):	16
Exemption 7(B):	0
Exemption 7(C):	32
Exemption 7(D):	13
Exemption 7(E):	6
Exemption 7(F):	0
Exemption 8:	0
Exemption 9:	0

4. Other reasons for nondisclosure:

No records:	27
Referred elsewhere:	6
Request withdrawn:	17
Fee-related reason:	1
Records not reasonably described:	0
Not a proper FOIA request for some reason:	0
Not an agency record:	1
Duplicate request:	2
Other (specify):	6

VII. Compliance with Time Limits/Status of Pending Requests

A. Median Processing Time for Requests

1. Simple requests

- a. Number of requests processed: 5,515
- b. Median number of days to process: 11 days

2. Complex requests

- a. Number of requests processed: 72,825
- b. Median number of days to process: 20 days

3. Requests accorded expedited processing

- a. Number of requests processed: 41
- b. Median number of days to process: 7 days

Records retrieved from a Federal Records Center take several weeks to obtain. Requests that require a notice to submitters of information, allowing them time to comment on the release of responsive records, and USDA's acknowledgment of comments may take several weeks to process. Requests that require an advance payment of fees before processing also take additional time.

B. Status of Pending Requests

- 1. Number of requests pending at end of FY 99: 1,884
- 2. Median number of days requests were pending at end of FY 99: 22 days

VIII. Comparisons With Previous Years

Improve timeliness.

Agency FOIA requests are faxed and e-mailed to component units to speed up processing time. One agency has plans to update their current automated tracking system. Another agency has established a process for timely copying of all case files.

Audit reports anticipated to have great public interest are placed on the Internet so that requesters can quickly have access to them. Executive summaries for audit reports completed each month are automatically sent to interested Members of Congress and the press. One agency headquarters staff has hired an additional full-time staff member to assist in processing FOIA requests. Agencies are providing public information and frequently requested information through FOIA websites.

Agency regional office staff are improving communications with their field units by providing a FOIA/PA advice line and an updated FOIA Deskguide. Agencies updated their internal employee FOIA guidelines and instructions to the public on how to make FOIA requests. Internal directives stressed the importance of timely responses, and negative consequences were specified as reminders to staff.

Reduce backlog.

One agency recruited several program specialists from State and County Offices on a temporary basis to assist with processing backlogged FOIA appeals. Another agency established procedures for quick location of case files, fast processing to copy files and to centrally locate files. Several agencies used detailers and stay-in school employees to assist in processing requests. Another agency assigned one person to respond to FOIA requests within each State Office.

Some agencies have established multiple tracking systems, permitting simple requests to be answered quickly and complex requests to be placed in a queue and answered in order of receipt.

Provide training.

The FOIA staffs of most USDA agencies attended either the Department of Justice course, "Freedom of Information Act for Attorneys and Access Professionals" in fiscal year 1999, or the FOIA training sponsored by the USDA Graduate School, or the training sponsored by the American Society for Access Professionals. A majority of USDA agencies conducted on-the-job training for agency personnel on processing FOIA requests.

Many agencies provided field locations with copies of the Freedom of Information Act Guide & Privacy Act Overview and the Department of Justice quarterly FOIA Updates to use as reference material. Field units have added employees with part-time FOIA responsibility. Regional FOIA Offices have scheduled monthly FOIA Conference calls as a training tool.

The Farm Services Agency coordinated with Department of Justice and the USDA Office of General Counsel and provided three days of FOIA/PA training to over 100 staff members. The Forest Service has an annual FOIA/PA Conference that is open to all headquarters and field personnel involved in processing FOIA requests.

Add new categories of records.

The establishment of agency web pages expanded the categories of records available to the public. Lists of record systems also were updated.

IX. Costs/FOIA Staffing

A. Staffing Levels

1. Number of full-time FOIA personnel: 58.00
2. Number of personnel with part-time or occasional FOIA duties (in work-years): 2,704
3. Total number of personnel (Work-years): 262.8

B. Total Costs

1. FOIA processing: \$6,626,448
2. Litigation-related activities (estimated): \$313,138
3. Total costs: 6,939,586

C. Statement of Additional Resources Needed

Most agencies expressed the need for more professional staffing, more clerical assistance, and more money to pay for training, national meetings, and to upgrade automated record processing. Several agencies expressed the need for more advanced tracking and document imaging systems.

X. Fees

A. Total fees collected for search, review, duplication and other direct costs permitted by agency regulations: \$132,718

B. Most USDA agencies collected fees that amounted to less than ten percent of total costs. Exceptions were: Research, Education and Economics, 54 percent; Food and Nutrition Service, 38 percent; Food Safety and Inspection Service, 12 percent.

XI. FOIA Regulations

USDA's draft regulations implementing the Electronic Freedom of Information Act Amendments of 1996 were published in the Federal Register May 4, 1998, and are available on the World Wide Web at:

[http://www.usda.gov/News&Information;/FOIA_Information/USDA
FOIA Regulations](http://www.usda.gov/News&Information;/FOIA_Information/USDA_FOIA_Regulations)

Final regulations are pending. USDA's current fee schedule was published in the Federal Register December 31, 1987.

USDA's home page is located at <http://www.usda.gov>. The web sites of USDA agencies are linked to this home page, and each agency's web site contains explanatory information about FOIA processing.